

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of)
)
Streamlining the Commission's)
Antenna Structure Clearance)
Procedure)
)
and)
)
Revision of Part 17 of the)
Commission's Rules Concerning)
Construction, Marking, and)
Lighting of Antenna Structures)

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

WT Docket No. 95-5

To: The Commission

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COMMENTS
OF THE
PERSONAL COMMUNICATIONS INDUSTRY ASSOCIATION

The Personal Communications Industry Association ("PCIA")/¹, by its attorneys, in response to the Notice of Proposed Rule Making ("NPRM"), FCC 95-16 (released January 20, 1995), herewith submits its Comments in the above-referenced proceeding. PCIA supports the Commission's goals of

¹ PCIA is an international trade association created to represent the interests of both commercial mobile radio service (CMRS) and private mobile radio service (PMRS) users and businesses involved in all facets of the personal communications industry. PCIA's federation of councils include: the Paging and Narrowband PCS Alliance, the Broadband PCS Alliance, the Specialized Mobile Radio Alliance, the Site Owners and Managers Association ("SOMA"), the Association of Wireless System Integrators, the Association of Communications Technicians, and the Private System Users Alliance. In addition, PCIA is the FCC-appointed frequency coordinator for the 450-512 MHz bands in the Business Radio Service, the 800 and 900 MHz Business Pools, 800 MHz General Category frequencies for Business eligibles and conventional SMR systems, and for the 929 MHz paging frequencies.

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streamlining the antenna clearance process and holding structure owners primarily responsible for compliance with the Part 17 Rules for the marking and lighting of antenna towers. The FCC has not presented a compelling argument for imposing registration or renewal fees for this process. PCIA cautions that the procedure outlined by the Commission for assigning each structure a unique identification number must be viewed in its proper context, as a registration procedure as opposed to "licensing" of antenna structures./²

**I. PCIA Supports the Concept of "Sole Responsibility"
By Tower Owners**

PCIA supports the Commission's proposal to require a single entity -- the antenna structure owner -- to become primarily responsible for painting and lighting the tower. PCIA's SOMA membership section has long advocated this.

Last year both NABER and SOMA staff persons met with FCC personnel on numerous occasions to advocate the view that the structure owner should have the sole responsibility for

² The matters raised in this proceeding are of particular importance to PCIA's SOMA membership section, which was founded by the National Association of Business and Educational Radio ("NABER") in 1993 to advance the profession of communications site management through education, increased public awareness and the promotion of fair and equitable regulatory and legislative standards. SOMA members constitute site owners and managers maintaining and/or operating tower site locations throughout the United States. SOMA's broad membership includes over 80 communications companies, located in more than 32 States, and the District of Columbia. SOMA's member site owners and managers are involved in a wide variety of communications services, such as cellular, paging, special mobilized radio, and broadcast.

compliance with the regulations for the marking and lighting of antenna structures. These discussions with the Commission's staff are summarized as follows:

(1) In April 1994, NABER staff met the members of the FCC "TOM" task force (comprised of representatives of all FCC "wireless" bureaus) that was charged with recommending a practical framework for managing rules, compliance and enforcement procedures and data management related to antenna structures. At that time, NABER emphasized the importance of placing the responsibility for compliance with the marking and lighting regulations with the structure owner, rather than the FCC permittee or licensee. NABER also advised the FCC that the present system for managing antenna structure information was inherently inadequate and inefficient.

(2) In May 1994, at a meeting between FCC staff and SOMA staff, significant discussions took place concerning the unfairness of current enforcement mechanisms where multiple forfeitures can be assessed for a single violation.

(3) Late last year NABER staff had periodic discussions with members of the FCC internal task force at which time SOMA views on forfeitures, sole responsibility and the importance of an accurate site database, were discussed.

When a structure owner cannot be identified and the Commission seeks redress from the licensees located on that structure, the regulations should be crafted in such a manner as to ensure that the total fines assessed on the licensees not exceed the amount of the fine that would have been assessed upon the structure owner. In other words, the secondary responsibility and liability of the licensees on the tower should not be greater than that placed upon the party that otherwise would be primarily responsible and liable.

II. This Is A Registration Proceeding And Not A Licensing Proceeding. Therefore, If Implemented, Registration Should Be Limited To Structures Subject To FAA Rules.

The scope of this proceeding must be restricted to the proposed registration -- and not licensing -- of antenna structures. If a registration process is implemented, the Commission must do nothing more than to accept the registration information that a party submits. If the Commission requires additional or clarifying information, it must do so without rejecting the registrant's previous submission, and without the imposition of any penalty.

There is a difference of opinion within the industry regarding the efficacy of mandatory registration for the approximately 70,000/³ sites that are currently subject to the jurisdiction of the FAA, but there is no question that a significant part of the industry wants to avail itself of the benefits of a uniform registration process on a voluntary basis. Such a process could lead to less paperwork and could relieve tower owners from the burden of excessive fines and forfeitures./⁴ To the extent there is any justification for mandatory registration of FAA-approved sites, it is clear that

³ See, NPRM at para. 8.

⁴ In order to further relieve the Commission's paperwork burden, registrants could be given the option of filing electronically. Once a structure is registered, its registration number could later be used on a wide variety of FCC applications to speed up the application's processing. In fact, tower registration numbers could facilitate the FCC's efforts to verify the availability of tower sites specified in applications, thereby indirectly limiting the number of speculative applications that are often filed with the FCC.

the industry is not interested in any form of mandatory registration of the more than 400,000/⁵ other sites that are exempt from FAA approval.

It would be counterproductive to create a registration process that would require the registration of any site that does not require the submission of an FAA Form 7460. If the purpose of this proceeding is to enable the Commission to more efficiently assess fines against parties who violate Part 17 marking and lighting rules, then registration of sites that do not require FAA approval is unnecessary. Were the Commission to require mandatory registration of the more than 400,000 other sites, the process would invariably lead to a tremendous backlog of licensing applications at the FCC for those applications that would require site registration information. Also, such an expansion of the site registration process is likely to have a "chilling effect" on the industry --- many owners of buildings or other structures would balk at the notion of registering their edifices with the FCC, thus leading to a quick and substantial reduction in the availability of antenna/transmitter sites. Although some site owners might want to voluntarily avail themselves of a uniform registration process for business purposes, they should not be required to register those sites that have no painting or lighting requirements.

The value of the Commission's proposed antenna structure database must be balanced with the burdens that might ensue

⁵ See, *NPRM* at para. 8.

from the registration process. PCIA encourages the Commission to adopt an FCC Form 854-R that is easy for the registrant to understand and complete, and requires only the most pertinent information about the antenna structure and the registrant. SOMA members are currently reviewing proposed FCC Form 854-R and proposed revisions to FCC Form 854, and will provide additional comments as appropriate during the Reply Comment period in this proceeding.

III. Participants In The Registration Process Should Not Be Charged Fees

The NPRM also suggests that registrants should be assessed a registration fee, and possibly a registration renewal fee. The Commission has not demonstrated justification for such a fee. The FAA does not charge fees for the filing of FAA Form 7460-1 "Notice of Proposed Construction or Alteration," which is the prerequisite to obtaining an FAA Determination of No Air Hazard. When the Commission initiated its Fee Collection Program, the Congressional mandate was for the Commission to recoup, via the regulatory fees, the expenses it incurs in processing applications and regulating Commission permittees and licensees. *See generally, Fees II, 5 FCC Rcd. 3558 (1990).* Since the proposed antenna structure registration process will not require the Commission's staff to process and/or grant any kind of application, or subject the Commission to the filing

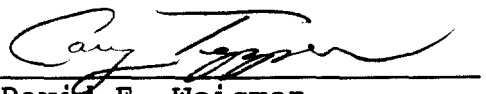
of any pleadings or petitions, the regulatory expenses to oversee the registration process should be minimal./⁶

IV. Conclusion

Based upon the foregoing, PCIA generally supports the proposal to streamline the Commission's antenna structure clearance procedures and revision of Part 17 of the Commission's Rules.

Respectfully submitted,

**PERSONAL COMMUNICATIONS INDUSTRY
ASSOCIATION**

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⁶ In the NPRM at footnotes 15 and 16, the Commission explains that streamlining the regulatory process will cut costs for the federal government in the amount of almost \$500,000.00. Given the cost savings that adoption of these procedures will create, the imposition of registration fees are unjustified. With respect to the establishment of its antenna structure database, a reasonable alternative to minimizing the burden upon the Commission would be to authorize a third party to administer the registration and database functions.